

1 Michael Sanderson Lawson, SBN: 48172  
 2 City Attorney  
 3 CITY OF EAST PALO ALTO  
 4 2415 University Avenue  
 5 East Palo Alto, CA 94303  
 6 Telephone: (650) 853-5921  
 7 Facsimile: (650) 853-5923  
 8 mlawson@cityofepa.org

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U.S. DISTRICT COURT  
CLERK'S OFFICE  
NORTHERN DISTRICT OF CALIFORNIAFEB  
2007  
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9 Benjamin P. Fay, SBN: 178856  
 10 Rick W. Jarvis, SBN: 154479  
 11 JARVIS, FAY & DOPORTO, LLP  
 12 475 - 14<sup>th</sup> Street, Suite 260  
 13 Oakland, CA 94612  
 14 Telephone: (510) 238-1400  
 15 Facsimile: (510) 238-1404  
 16 bfay@jarvisfay.com  
 17 rjarvis@jarvisfay.com

18 Attorneys for Respondent  
 19 CITY OF EAST PALO ALTO

ADR

12  
 13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA

15  
 16 PALO MOBILE ESTATES ASSOCIATES, a ) CASE NO: 07-03601 EDL  
 17 California limited partnership, )  
 18 Petitioner, )  
 19 v. )  
 20 CITY OF EAST PALO ALTO, a municipal )  
 21 corporation; DOES 1 through 10, inclusive, )  
 22 Respondents. )

GO 44 SEC. N  
 NOTICE OF ASSIGNMENT  
 TO MAGISTRATE JUDGE SEMI

23 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

24 PLEASE TAKE NOTICE THAT respondent City of East Palo Alto hereby removes to this Court  
 25 the state court action described below.

26 1. On June 12, 2007, an action was commenced in the Superior Court of the State of

27 California in and for the County of San Mateo, entitled *Palo Mobile Estates Associates v. City of East*

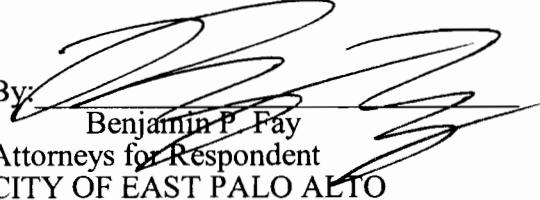
1 | Palo Alto, et al., as case number CIV 436680. The Verified Complaint for Declaratory Relief, Injunctive  
2 | Relief and Inverse Condemnation is attached hereto as Exhibit "A."

3 |       2. The date upon which defendant City of East Palo Alto received a copy of said complaint  
4 | was June 13, 2007, when defendant was served with a copy of the summons and complaint which was  
5 | filed in the County of San Mateo. A copy of the summons is attached hereto as Exhibit "B".

6 |       3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C.  
7 | section 1331, and is one which may be removed to this Court by defendant pursuant to the provisions of  
8 | 28 U.S.C. section 1441(b) in that the Third Cause of Action arises under the Fifth and Fourteenth  
9 | Amendments of the United States Constitution, asserting a taking of the plaintiffs' property for a non-  
10 | public purpose and without just compensation. The remaining causes of action are not by themselves  
11 | removable in that they do not allege any claims which arise under federal law, but the entire case is  
12 | removable under 28 U.S.C. section 1441(c).

13 |  
14 | Dated: July 12, 2007

JARVIS, FAY & DOPORTO, LLP

15 |  
16 | By:   
17 | Benjamin P. Fay  
18 | Attorneys for Respondent  
19 | CITY OF EAST PALO ALTO

20 |  
21 | J:\Clients\103 [E. Palo Alto]\010 (Palo Mobile Estates Complaint)\Plead\Notice of Removal to Federal Court.wpd  
22 |  
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28 |



1 RICHARD H. CLOSE (Bar No. 50298)  
 2 THOMAS W. CASPARIAN (Bar No. 169763)  
 3 YEN N. NGUYEN (Bar No. 233880)  
 4 GILCHRIST & RUTTER  
 Professional Corporation  
 Wilshire Palisades Building  
 1299 Ocean Avenue, Suite 900  
 Santa Monica, California 90401-1000  
 Telephone: (310) 393-4000  
 Facsimile: (310) 394-4700  
 5  
 6 Attorneys for Plaintiff Palo Mobile Estates  
 7 Associates

**ENDORSED FILED  
SAN MATEO COUNTY**

JUN 12 2007

Clerk of the Superior Court  
 A. De Leon  
 By DEPUTY CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF SAN MATEO

10  
 11 PALO MOBILE ESTATES ASSOCIATES, a  
 California limited partnership,  
 12

CASE NO.

CV 463688

Plaintiff.

VERIFIED COMPLAINT FOR  
 DECLARATORY RELIEF, INJUNCTIVE  
 RELIEF AND INVERSE CONDEMNATION

vs.

13  
 14 CITY OF EAST PALO ALTO, a municipal  
 corporation; DOES 1 through 10, inclusive,  
 15

Defendants.

16  
 17 Plaintiff Palo Mobile Estates Associates ("PME") by this complaint ("Complaint") hereby  
 alleges as follows:

THE PARTIES

18  
 19 1. PME is a California limited partnership duly authorized and existing under and by  
 virtue of the laws of the State of California.  
 20

21  
 22 2. PME is informed and believes, and thereon alleges, that defendant City of East Palo  
 Alto ("City") is a municipal corporation organized and existing under the laws of the State of  
 California.  
 23

24  
 25 3. The true names and capacities, whether individual, corporate, associate,  
 governmental or otherwise, of defendants Does 1-10, inclusive, are unknown to PME at this time  
 and PME therefore sues said defendants by such fictitious names. Leave of Court will be  
 26

1 requested to amend this Complaint to show their true names and capacities when the same have  
2 been ascertained. City and Does 1-50, inclusive, are sometimes hereinafter collectively referred to  
3 as "Defendants." PME is further informed and believes, and thereon alleges that Defendants, and  
4 each of them, in doing the things hereinafter alleged were acting pursuant to the course and scope  
5 of their authority as agents, servants, and employees of one another and with the permission and  
6 consent of their co-defendants.

7       4. PME is informed and believes, and based thereon alleges, that Defendants, and  
8 each of them, conspired and acted in concert with each other with respect to the events and  
9 happenings referred to herein which proximately caused the damages hereinafter alleged.

#### VENUE AND JURISDICTION

5. This Court has personal jurisdiction over Defendants as they are, and at all relevant times hereinafter mentioned were, political subdivisions, cities, political and administrative bodies, domiciliaries, and/or residents of the State of California.

6.       Venue is properly placed in the County of San Mateo, State of California for the following reasons, among others: (a) the wrongful conduct, acts and omissions of Defendants hereinafter alleged occurred and took place in the County of San Mateo, State of California; (b) the effects of such wrongful conduct and the damages resulting therefrom to PME have occurred in the County of San Mateo, State of California; (c) the Defendants, their employees and representatives and most of the witnesses to the conduct alleged herein reside in or around the County of San Mateo or have their principal places of business and conduct their businesses within the County of San Mateo, State of California.

7. On May 1, 2007, PME filed a claim with City, pursuant to Government Code section 810 *et seq.*, otherwise known as the California Tort Claims Act.

## GENERAL FACTUAL ALLEGATIONS

8. PME is the owner of Palo Mobile Estates (the "Park"), a mobilehome park located in the City of East Palo Alto. PME was and is seeking to convert the Park to resident ownership pursuant to California Government Code section 66427.5. Such a conversion would mean that the residents of the Park would own their own real estate units, as well as an undivided interest in the

1 common areas, as opposed to a rental-only facility owned by Plaintiff. When a mobilehome park  
 2 is converted to condominium-style ownership, each lot in the mobilehome park becomes  
 3 separately transferable pursuant to State law and subject to applicable covenants, conditions, and  
 4 restrictions. State law provides for its own form of rent control applicable in a resident-owned  
 5 park and preempts any otherwise applicable local rent control.

6       9. California has adopted a comprehensive statutory scheme governing conversion of  
 7 mobilehome parks from rental facilities to resident-owned, or condominium-style, parks. The  
 8 agency principally responsible for administering that statutory scheme is the California  
 9 Department of Real Estate. Under California law, the authority of local bodies such as City is  
 10 limited to consideration of an application for a tentative tract map pursuant to Government Code  
 11 section 66427.5 (within the Subdivision Map Act, Government Code section 66410 *et seq.*). Such  
 12 a map has the effect of subdividing the single parcel into separately transferable real estate units,  
 13 as well as interest in undivided common areas. No construction or physical development at the  
 14 mobilehome park is contemplated or necessary. Rather, the subdivision is on paper only.

15     10. A local agency's, such as City's, consideration of such an application is governed  
 16 by Government Code section 66427.5, which provides specific and detailed requirements for  
 17 conversions to resident ownership and limits the local government's review of the application to  
 18 the question of whether the requirements of Government Code section 66427.5 have been  
 19 satisfied. After the local government approves the map subdivision, the California Department of  
 20 Real Estate regulates the marketing and sale of the individual units in the mobilehome park.

21     11. Pursuant to this statutory framework, PME has submitted an application for a  
 22 tentative tract map to subdivide the Park for condominium purposes ("Application"). The  
 23 Application does not contemplate any new building or development; it merely subdivides the  
 24 property lines to allow for resident ownership of lots in the Park.

25     12. In or around March 2007, PME became aware that City was planning a vote  
 26 regarding a proposed interim urgency ordinance, allegedly pursuant to Government Code section  
 27 65858, to impose a forty-five (45) day moratorium on approving applications for conversions of  
 28 mobilehome parks to resident ownership within the City.

1       13. In a letter dated March 9, 2007, PME advised City that the proposed moratorium  
 2 was illegal in light of controlling state statutes and appellate court opinions. PME advised City that  
 3 the proposed moratorium was not supported by adequate legislative findings, as required under  
 4 Government Code section 65858, and was therefore an improper use of City's authority to pass  
 5 interim urgency measures. PME further informed City that it was preempted from legislating in  
 6 the area of mobilehome park conversions from rental-only facilities to resident ownership. A true  
 7 and correct copy of PME's March 9, 2007 letter is attached hereto as Exhibit "A."

8       14. Nevertheless, during a City Counsel hearing on March 13, 2007, City, acting  
 9 through its City Council, enacted Ordinance No. 299 imposing a temporary forty-five (45) day  
 10 moratorium on the conversion of mobilehome parks to resident ownership in the City of East Palo  
 11 Alto ("Original Moratorium"). A true and correct copy of Ordinance No. 299 is attached hereto as  
 12 Exhibit "B."

13       15. In a letter dated April 13, 2007, PME again advised City that the Original  
 14 Moratorium was an improper use of City's authority to pass interim urgency measures and was  
 15 violative of California law. PME informed City that the conversion of a mobilehome park from a  
 16 leasehold to resident ownership did not constitute a change of use allowing for the imposition of  
 17 an interim ordinance under Section 65858(a) prohibiting its use. PME reiterated that, even if the  
 18 conversions to resident ownership constituted a change of use, which it did not, Defendants  
 19 abused their discretion by enacting the Original Moratorium without meeting the mandatory  
 20 prerequisites set forth in Government Code section 65858(c), *i.e.*, making adequate legislative  
 21 findings that the conversion of mobilehome parks to resident ownership constitute "a current and  
 22 immediate threat to the public health, safety, or welfare. . ." Cal. Gov't Code § 65858(c). Lastly,  
 23 PME noted City was preempted entirely from legislating in the area of mobilehome park  
 24 conversions from rental-only facilities to resident ownership. PME advised City that, for those  
 25 same reasons, an extension of the Original Moratorium would also be violative of the law. A true  
 26 and correct copy of PME's April 13, 2007 letter is attached hereto as Exhibit "C."

27       16. On April 24, 2007, the City Council held a hearing to consider, among other things,  
 28 extending the Original Moratorium. Representatives of PME were present at the April 24, 2007

1 hearing and again attempted to advise City that the Original Moratorium, and its extension, was  
 2 violative of the law. However, City disregarded PME's objections and adopted Ordinance No.  
 3 300 extending the Original Moratorium for a period of three (3) months ("Extended Moratorium,"  
 4 together with Original Moratorium, "Moratorium"). Specifically Section 2 of Ordinance No. 300  
 5 states, "[d]uring the period this ordinance remains in effect [from April 27, 2007 to and including  
 6 July 27, 2007], no permit or approval of any entitlement application shall be granted allowing the  
 7 conversion of a mobilehome park to resident ownership within the city of East Palo Alto."  
 8 Furthermore, Ordinance No. 300 states the purpose of the Moratorium is "to provide staff and  
 9 advisory bodies sufficient time to study the issues and make recommendations on whether and  
 10 how to regulate mobilehome park conversions. . . ." Such regulation is expressly prohibited by  
 11 California law. A true and correct copy of Ordinance No. 300 is attached hereto as Exhibit "D."

12 17. During the April 24, 2007 hearing, members of the City Council made clear their  
 13 desire to stop mobilehome park conversions to resident ownership, despite clear State statutory  
 14 authority enabling and encouraging owner-initiated conversions. It is evident both from the tenor  
 15 of the April 24, 2007 hearing and the alleged "findings" in the Extended Moratorium that City, in  
 16 addition to improperly including mobilehomes in its affordable housing calculus, has concluded  
 17 that affordable rental opportunities allegedly provided by mobilehome parks as rental-only  
 18 facilities should be promoted over affordable homeownership opportunities available after  
 19 mobilehome park conversions to resident ownership, despite State statutory determinations  
 20 otherwise.

21 18. PME is informed and believes and thereupon alleges that upon the expiration of the  
 22 Moratorium, City may attempt to further extend the Moratorium for a period of one (1) year  
 23 pursuant to Government Code section 65858(a).

24 19. As a result of City's illegal acts, PME has been damaged for a sum in excess of  
 25 \$14,625,000.00, which sum represents, among other things, the loss in the fair market value of  
 26 PME's mobilehome park and loss of income caused by its inability to convert its Park to resident  
 27 ownership.

28

1       20. In order to expedite resolution on the validity of the Moratorium and pursuant to  
2 the Supreme Court's decision in *Kavanau v. Santa Monica Rent Control Board*, Plaintiff has also  
3 filed a separate Verified Petition for Writ of Mandate ("Petition") concurrently with this  
4 Complaint seeking a writ of mandating directing Defendants to vacate Ordinance No. 300 and  
5 resume approval of subdivision applications for conversions of mobilehome parks to resident  
6 ownership within City. 16 Cal. 4<sup>th</sup> 761, 779 (1997) ("[I]f a property owner brings a timely action  
7 to set aside or void a regulation, he may *but need not* join a claim for damages. Instead, he may  
8 bring a damages claim separately after successfully challenging the regulation.").

## FIRST CAUSE OF ACTION

(For Declaratory Relief Against City and Does 1 – 10)

21. PME re-alleges and incorporates herein by this reference Paragraphs 1 through 20, inclusive, as if set forth in full herein.

22. An actual controversy has arisen and now exists between PME and Defendants, and each of them, regarding their respective rights, duties, and obligations under Government Code sections 65858 and 66427.5, California law, and the Moratorium in that PME contends Defendants acted illegally in enacting the Moratorium for the following reasons: (i) even if City did have authority to legislate mobilehome park conversions, which it did not, Government Code section 65858 does not allow for the imposition of an interim ordinance to prohibit a current use; (ii) irrespective, Defendants did not comply with the mandatory prerequisites set forth in Government Code section 65858(c); and, (iii) Defendants deliberately ignored the fact that local authority concerning mobilehome park conversions to resident ownership is limited to confirming that applications for conversion comply with the requirements contained in Government Code section 66427.5, whereas Defendants dispute these contentions.

23. PME desires a judicial determination of the respective rights and duties of it and of Defendants with respect to Government Code sections 65858 and 66427.5, California law, and the Moratorium. In particular, PME desires a declaration that: (i) compliance with Government Code sections 65858 and 66427.5 and California law is mandatory; (ii) even if City did have authority to legislate mobilehome park conversions, which it did not, Government Code section 65858 does

1 not allow for the imposition of an interim ordinance to prohibit a current use; (iii) irrespective, in  
2 enacting the Moratorium, PME did not comply with the mandatory prerequisites set forth in  
3 Section 65858(c) of the Government Code; (iv) in enacting the Moratorium, Defendants  
4 improperly attempted to legislate in an area exclusively subject to State control; and, (v) said  
5 failure to comply with Government Code sections 65858 and 66427.5 and California law thereby  
6 renders the Moratorium invalid;

7       24. Such a declaration is necessary and appropriate at this time in order that PME may  
8 ascertain its rights and duties with respect to Government Code sections 65858 and 66427.5,  
9 California law, and the Moratorium.

## **SECOND CAUSE OF ACTION**

**(For a Preliminary Injunction and a Permanent Injunction Against City and Does 1 – 10)**

12        25. PME re-alleges and incorporates herein by this reference Paragraphs 1 through 24,  
13 inclusive, as if set forth in full herein.

14        26. PME seeks a preliminary and permanent injunction to enjoin Defendants from  
15 enforcing the Moratorium.

16        27. PME has demanded that Defendants stop their wrongful conduct described above  
17 and to vacate Ordinance No. 300. Defendants, and each of them, have refused to comply with  
18 PME's demands and have continued to uphold and enforce the Moratorium, notwithstanding  
19 PME's request that City cease enforcing the Moratorium and immediately vacate the same.

20        28. Unless and until enjoined and restrained by this Court, Defendants' conduct has  
21 caused and will continue to cause PME to suffer grave and irreparable injury. PME's lawful use  
22 of its property has been unlawfully stymied by the Moratorium. Among other things, PME is  
23 unable to convert its Park to residential ownership, thereby facing loss in the fair market value of  
24 its Park and loss of income. PME's injury is continuous and ongoing.

25        29. PME is likely to prevail on the merits of this action as Defendants clearly acted  
26 without legal authority in enacting the Moratorium in that: (i) even if City did have authority to  
27 legislate mobilehome park conversions, which it did not, Government Code section 65858 does  
28 not allow for the imposition of an interim ordinance to prohibit a current use; (ii) irrespective,

1 Defendants did not comply with the mandatory prerequisites set forth in Government Code section  
 2 65858(c); and, (iii) Defendants deliberately ignored the fact that local authority concerning  
 3 mobilehome park conversions to resident ownership is limited to confirming that applications for  
 4 conversion comply with the requirements contained in Government Code section 66427.5.

5 30. PME has no plain, speedy, or adequate remedy at law, and injunctive relief is  
 6 authorized by California Code of Civil Procedure section 526.

7 THIRD CAUSE OF ACTION

8 (For Inverse Condemnation Against City and Does 1 – 10)

9 31. PME re-alleges and incorporates by reference each and all of the allegations  
 10 contained in paragraph numbers 1 through 30, as if set out in full.

11 32. PME has a legal right to convert its mobilehome park to resident ownership. City's  
 12 adoption of the Moratorium amounts to an unconstitutional taking and fails substantially to  
 13 advance legitimate government interests as required by the Takings Clause of the Fifth  
 14 Amendment to the United States Constitution and Article I, Section 19 of the California  
 15 Constitution. By adopting the Moratorium, City exceeded its authority and jurisdiction and  
 16 interfered with the statutory and regulatory process as established by the Legislature. The  
 17 Moratorium frustrates uniform standards designed to regulate mobilehome parks.

18 33. The Moratorium works an unconstitutional taking of PME's private property for  
 19 public use because it does not advance any legitimate interest of City and is an illegal exaction  
 20 imposed on PME. Not only did City not observe the mandatory prerequisites set forth in Section  
 21 65858(c) of the Government Code in enacting the Moratorium, therefore rendering the  
 22 Moratorium void, but State law prohibits City from enacting the Moratorium altogether. PME is  
 23 informed and believes, and based on such information and belief alleges, that Defendants enacted  
 24 the Moratorium knowing that it had no power to do so. The Moratorium is clearly illegal in light  
 25 of appellate court opinion and California law and is so unreasonable from a legal standpoint that it  
 26 was clearly intended solely for the purpose of delay and obstruction.

27 34. PME is further informed and believes, and based on such information and belief  
 28 alleges, that City enacted the Moratorium knowing that they did not advance any legitimate

1 governmental interests.

2       35. Even assuming City had the power to enact the Moratorium, PME is informed and  
 3 believes, and based on such information and belief alleges, that there is not an essential nexus  
 4 between the Moratorium, and any authority City may have to adopt the Moratorium. Moreover,  
 5 PME is informed and believes, and based on such information and belief alleges, that the  
 6 Moratorium is not roughly proportional to the effects of the conversion of PME's mobilehome  
 7 Park. Rather, the Moratorium prevents PME from exercising a legitimate right to convert its Park  
 8 to resident ownership and forces PME, a single property owner, to bear a disproportionate share of  
 9 the cost of allegedly protecting the public safety, health and welfare.

10     36. PME has suffered and continues to suffer damages, in an amount to be proven at  
 11 trial, as a result of City's unconstitutional taking of its private property. PME's lawful use of its  
 12 property has been unlawfully stymied by the imposition of the illegal Moratorium, resulting in  
 13 damages for a temporary taking in an amount to be proven at trial but believed to be not less than  
 14 \$14,625,000.00.

15  
 16       WHEREFORE, PME prays for judgment against Defendants, and each of them, as  
 17 follows:

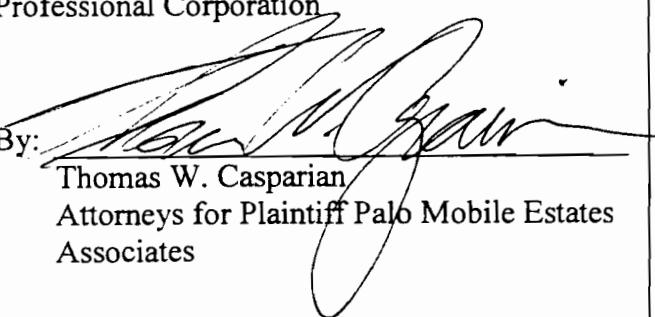
- 18     1. For a judicial declaration of the respective rights and duties of PME and of  
 19 Defendants with respect to Government Code sections 65858 and 66427.5,  
 20 California law, and the Moratorium. In particular, PME desires a declaration that:  
 21           (i) compliance with Government Code sections 65858 and 66427.5 and California  
 22 law is mandatory; (ii) even if City did have authority to legislate mobilehome park  
 23 conversions, which it did not, Government Code section 65858 does not allow for  
 24 the imposition of an interim ordinance to prohibit a current use; (iii) in enacting the  
 25 Moratorium, Defendants did not comply with the mandatory prerequisites set forth  
 26 in Section 65858(c) of the Government Code; (iv) in enacting the Moratorium,  
 27 Defendants improperly attempted to legislate in an area exclusively subject to State  
 28

- control; and (vi) said failure to comply with Government Code sections 65858 and 66427.5 and California law thereby render the Moratorium invalid;
2. For a preliminary injunction and permanent injunction prohibiting Defendants from enforcing the Moratorium;
  3. For recovery of damages against PME in an amount to be proven at trial, but not less than \$14,625,000;
  4. For an award of costs of suit, expenses, and reasonable attorneys' fees against the City; and
  5. For such other further relief as the Court deems just and proper.

DATED: June 8, 2007

GILCHRIST & RUTTER  
Professional Corporation

By:

  
Thomas W. Casparian  
Attorneys for Plaintiff Palo Mobile Estates  
Associates

LAW OFFICES  
**GILCHRIST & RUTTER**  
PROFESSIONAL CORPORATION  
1288 OCEAN AVENUE, SUITE 800  
SANTA MONICA, CALIFORNIA 90401-1000  
TEL (310) 393-4000 • FAX (310) 394-4700

1 VERIFICATION  
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7

I, Douglas Kirchner, am a General Partner of Palo Mobile Estates Associates and am  
authorized to make this verification on its behalf. I have personally viewed and am familiar with  
the records, files, and proceedings described herein. I know the facts set forth in the attached  
Complaint to be true. I know the exhibits attached to the Complaint to be true and correct copies  
of the documents described.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1<sup>st</sup> day of June 2007 at New York, New York.

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Douglas Kirchner

LAW OFFICES  
**GILCHRIST & RUTTER**  
 PROFESSIONAL CORPORATION

WILSHIRE PALISADES BUILDING  
 1289 OCEAN AVENUE, SUITE 900  
 SANTA MONICA, CALIFORNIA 90401-1000

TELEPHONE (310) 393-4000  
 FACSIMILE (310) 394-4700  
 E-MAIL: [rclose@gilchristrutter.com](mailto:rclose@gilchristrutter.com)

March 9, 2007

**VIA FEDEX**

Mayor David E. Woods  
 Vice Mayor Patricia Foster  
 Councilmember Ruben Abrica  
 Councilmember A. Peter Evans  
 Councilmember Donna Rutherford  
 East Palo Alto City Council  
 East Palo Alto City Hall  
 2415 University Avenue, 2<sup>nd</sup> Floor  
 East Palo Alto, California 94303

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Re: Adoption Of Proposed Ordinance Concerning Moratorium on Conversions of  
 Mobilehome Parks – City Council Meeting: March 13, 2007

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Dear Mayor Woods, Vice Mayor Foster, and Councilmembers Abrica, Evans and Rutherford:

As you are aware, we represent owners of Palo Mobile Estates (“PME”), a mobilehome park located in the City of East Palo Alto which is planning to convert from a rental park to a resident-owned park pursuant to the Subdivision Map Act, Government Code section 66427.5 (the “Conversion”).

In a letter dated March 2, 2007, we urged the City of East Palo Alto (“City”) not to adopt a proposed ordinance imposing certain illegal conditions on the conversion of mobilehome parks from rental facilities to resident-owned parks (“Ordinance”). It has come to our attention that the City is now considering an alternative ordinance, this one imposing a temporary forty-five (45) day moratorium on the conversion of mobilehome parks. As with the original Ordinance, an ordinance imposing a temporary moratorium on mobilehome park conversions (“Moratorium”) is illegal.

As more fully set forth in our March 2, 2007 letter, under California law, local governments are preempted from legislating in the area of mobilehome park conversions. Not only does California law prevent the City from imposing conditions on the conversions, but it also prevents the City from imposing a Moratorium, which has the effect of delaying or halting mobilehome park conversions. Furthermore, the City has no authority to enact the Moratorium because the conversion of a mobile home park from a leasehold to resident ownership does not constitute a change of use allowing for the imposition of an interim ordinance under Government

EXHIBIT A

Mayor David E. Woods  
 Vice Mayor Patricia Foster  
 Councilmember Ruben Abrica  
 Councilmember A. Peter Evans  
 Councilmember Donna Rutherford  
 East Palo Alto City Council  
 March 9, 2007  
 Page 2

Code section 65858. We also note the California courts have held that a local agency simply cannot enact a moratorium on the filing or processing of subdivision applications. *See Building Industry Legal Defense Found. v. Superior Court*, 72 Cal. App. 4<sup>th</sup> 1410, 1420 (1999). Therefore, the Moratorium would be an improper use of the City's authority to pass interim urgency measures. Accordingly, for reasons set forth herein, we urge the City not to enact the Moratorium.

I. City's Power Is Strictly Limited To Determining If Owners Have Complied With Specific Requirements Of Government Code Section 66427.5

As more fully set forth in our March 2, 2007 letter, under California law, local governments are preempted from legislating in the area of mobilehome park conversions. The California Court of Appeals has stated that local governments "only ha[ve] the power to determine if [the applicant] had complied with the requirements of [Section 66427.5]." *El Dorado Palm Springs, Ltd. v. City of Palm Springs*, 96 Cal. App. 4th 1153, 1163-64 (2002) (emphasis added). The same rational the prohibits the City from imposing the conditions sought in the original Ordinance, prohibits the City from enacting a Moratorium.

The *El Dorado* court conclusively determined that: (i) Government Code section 66427.5 controls a mobile home conversion from a rental park to a resident-owned park (*Id.* at 1158-63); (ii) the purpose of Government Code section 66437.5 is to provide uniform statewide standards for converting rental parks into resident-owned parks, thereby promoting conversions to home ownership (*Id.* at 1169-1170); (iii) the requirements set out in Government Code section 66427.5 are exclusive and local government has no authority to impose additional conditions (*Id.* at 1164, 1166); (iv) if the requirements of Government Code section 66427.5 are met, the local agency must approve the conversion application (*Id.* at 1165, 1167); (v) local government does not have the ability or the authority to determine whether a conversion is "bona-fide" or not (*Id.* at 1165); and (vi) mobilehome park residents do not have and cannot have the ability to veto a conversion by withholding support for a conversion application (*Id.* at 1172, 1181-82).

Clearly, under *El Dorado*, the City's authority in is strictly limited to confirming that PME's conversion application complies with the requirements contained in Government Code section 66427.5. As such, the City does not have the authority to delay or halt PME's conversion by imposing a Moratorium. As discuss more fully below, the City's attempts to do so could cause it to be liable to PME for millions of dollars worth of damages.

**EXHIBIT A**

Mayor David E. Woods  
 Vice Mayor Patricia Foster  
 Councilmember Ruben Abrica  
 Councilmember A. Peter Evans  
 Councilmember Donna Rutherford  
 East Palo Alto City Council  
 March 9, 2007  
 Page 3

II. The Conversion Of A Mobilehome Park From A Leasehold To Resident Ownership Does Not Constitute A Change Of Use Allowing For The Imposition Of An Interim Ordinance Under Government Code Section 65858.

The City will presumably seek to adopt the Moratorium pursuant to Government Code section 65858. Section 65858(a) states that the local legislative body may “adopt as an urgency measure an interim ordinance prohibiting **any uses** that may be in conflict with a contemplated general plan, specific plan, or zoning proposal . . .” (emphasis added). However, the Moratorium does not purport (nor could it) to prohibit the mobilehome parks’ use as mobilehome parks. Rather, it attempts to prohibit temporarily the conversion of mobilehome parks to resident ownership. As the court made clear in *El Dorado* however, “[A] change in form of ownership is not a change in use. After the change of ownership, the mobilehome park will remain a mobilehome park.” 96 Cal. App. 4th at 1162.

Furthermore, it is well established that a local agency cannot enact a moratorium on the filing or processing of subdivision applications. *See Building Indus. Legal Def. Fund. v. Superior Court*, 72 Cal. App. 4th 1410. In *Building Industry*, the court held, “[n]othing in [Section 65858] permits a city to prohibit the formal processing of development applications, such as a tentative subdivision map.” *Id.* at 1420. The court also found that “[t]he Subdivision Map Act has established a comprehensive procedure for processing development applications, and **nothing in it allows a city to prohibit the processing of a tentative subdivision map that is complete, a city cannot use an interim ordinance as a backdoor method to modify the rules.**” *Id.* at 1417 (emphasis added).

In sum, Section 65858(a) was not intended, and cannot be used, to circumvent the City’s limitations in legislating mobilehome park conversions.

III. There Is No Urgency Or Threat Justifying The Enactment Of A Moratorium.

It is also well-established that unless the ordinance “recites facts that constitute the urgency and those facts may reasonably be held to constitute an urgency,” an interim urgency ordinance will be held invalid. *216 Sutter Bay Assoc. v. County of Sutter*, 58 Cal. App. 4<sup>th</sup> 860, 868 (1997). The Board of Supervisors may not use its power to pass interim urgency measures to further public policy goals where there is no finding of “a current and immediate threat.” Gov’t Code § 65858(c).

Here, there can be no facts which can support a finding of an “urgency” or an “immediate threat” to public health, safety and welfare because mobilehome park conversions pose no threat

**EXHIBIT A**

Mayor David E. Woods  
 Vice Mayor Patricia Foster  
 Councilmember Ruben Abrica  
 Councilmember A. Peter Evans  
 Councilmember Donna Rutherford  
 East Palo Alto City Council  
 March 9, 2007  
 Page 4

at all to the public health, safety and welfare. They certainly do not pose an "urgent" threat. Indeed, there is an elaborate state legislative scheme that is designed to both encourage conversions and protect affordable housing.

The Subdivision Map Act, and in particular Government Code section 66427.5, provides a comprehensive structure for mobile home conversions while also providing mitigation measures. It is settled law that section 66427.5 establishes a uniform statewide approach for converting mobile home parks to resident-owned facilities. *See El Dorado*, 96 Cal. App. 4th at 1168-69. Specifically, Government Code section 66427.5(f) provides statutory rent control protection. Furthermore, there is a state program under the Department of Housing and Community Development in existence for the sole purpose of providing financial assistance to low-income residents who choose to purchase their lot, thus encouraging local agencies and residents to support conversions to resident ownership. Moreover, mobile home park residents *may continue to rent their units even after conversion to resident-ownership*, thus calling into question whether any threat exists at all, let alone the immediacy of any alleged threat.

#### IV. PME Will Seek Damages Against The City For A Delay In The Approval Of Its Conversion Application.

California law is clear that local governments are pre-empted from attempting to legislate in the area of mobile home park conversions. The same rational that prohibits the City from imposing the conditions sought in the original Ordinance prohibits the City from enacting a Moratorium. If PME is forced to seek court intervention to invalidate the illegal Moratorium, or to invalidate any other actions the City takes to hinder or halt its Conversion, such delay caused by having to seek legal redress will result in damages to PME.

Any delay caused by the City to the Conversion will cause the City to be liable for inverse condemnation, or "takings," damages. The proper measure of damages for a taking would award the landowner "the return on the portion of fair market value that is lost as a result of regulatory restriction," or "the market rate return computed over the period of the temporary taking on the difference between the property's fair market value without the regulatory restriction and its fair market value with the restriction." *Wheeler v. County of Pleasant Grove*, 833 F.2d 267, 270-71 (11<sup>th</sup> Cir. 1987). Courts are in agreement that appreciation of the property during a taking must not be factored into the inverse condemnation damages calculation. *See Wheeler v. County of Pleasant Grove*, 833 F.2d 267, 271 (11th Cir. 1987); *Herrington v. County of Sonoma*, 790 F. Supp. 909, 914 (N.D. Cal. 1991), *aff'd*, 12 F.3d 901 (9th Cir. 1993). The United States Supreme Court has expressly held that because the market value of a property

**EXHIBIT A**

Mayor David E. Woods  
Vice Mayor Patricia Foster  
Councilmember Ruben Abrica  
Councilmember A. Peter Evans  
Councilmember Donna Rutherford  
East Palo Alto City Council  
March 9, 2007  
Page 5

frequently appreciates during the period of a temporary taking, compensation is not measured by comparing the value of the property before and after its taking, because to do so would often result in no compensation being awarded the property owner despite having lost the use or value of its property during the taking. *Wheeler*, 833 F.2d at 271, citing *Kimball Laundry Co. v. United States*, 338 U.S. 1, 7 (1949)).

Please understand that the park is not being closed and no one is being evicted. Upon conversion, residents have the choice whether to buy the lot their home currently sits on or to continue renting. In fact, low income residents will be forever protected by state rent control which caps rent increases at CPI, or less. In San Mateo County, a two person household earning \$72,400 qualifies as low income (for a four person household, an annual income level of \$90,500 qualifies.)

PME hopes that the City Council will refrain from approving either the original Ordinance, which imposes illegal conditions on mobilehome park conversions, or the Moratorium, which imposes an illegal delay on mobilehome park conversions. Both are an invalid exercise of the City's authority. But if the City enacts either, thereby delaying the Conversion, we will be forced to bring claims against the City for inverse condemnation and other wrongful acts. Damages will undoubtedly run into the millions.

Very truly yours,

GILCHRIST & RUTTER  
Professional Corporation



Richard H. Close  
Of the Firm

ynn:ynn/141785\_1.DOC/030707  
4597.001

cc: Michael S. Lawson, Esq., City Counsel (Via FedEx)

EXHIBIT A

**ORDINANCE NO. 299****AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF EAST PALO ALTO ADOPTING AND IMPOSING A TEMPORARY  
MORATORIUM ON THE CONVERSION OF MOBILEHOME PARKS  
TO RESIDENT OWNERSHIP**

The City Council of the City of East Palo Alto does ordain as follows:

**SECTION 1.** This ordinance is adopted pursuant to Gov. Code §§ 36937(d) and 65858. The purpose of this ordinance is to prohibit the conversion of mobilehome parks to resident ownership within the city of East Palo Alto pending enactment of permanent regulations affecting such conversions. The East Palo Alto City Council finds and determines as follows:

- a. Mobilehome parks provide a significant segment of the affordable housing stock available for East Palo Alto residents. At present there are two mobilehome parks subject to rent regulation within East Palo Alto. These two parks containing some 150 mobilehome spaces are subject to the rent adjustment provisions of Chapter 14.04 of the East Palo Alto Municipal Code (EPAMC), incorporated by reference herein.
- b. In most instances, mobilehome residents own or are purchasing their mobilehomes and pay monthly rent for the spaces beneath. Annual rent increases for mobilehome spaces are regulated under Chapter 14.04 of the EPAMC.
- c. The reasons for the City's Rent Adjustment Ordinance are set forth at § 14.04.020 of the EPAMC.
- d. The Housing Element of the City's General Plan, incorporated by reference herein, seeks to preserve affordable housing by conserving the City's existing stock of mobilehomes through enforcement of City ordinances that protect mobilehome parks from conversion and by providing rent stabilization protection. The Housing Element acknowledges, and the testimony and evidence adduced at the March 13, 2007 public hearing confirms, that residents of mobilehome parks are seniors, or low-to-moderate income residents unable to purchase homes in the Bay Area housing market. Many residents are on fixed-incomes or are disabled while other residents would have great difficulty in relocating their older mobilehomes to other parks in San Mateo County with comparable amenities.
- e. State law permits a mobilehome park to be subdivided into separate lots, such that residents may own not only the mobilehome itself, but also the space beneath it. These subdivisions are known as "the conversions of a mobilehome park to resident ownership." Upon such conversion to resident ownership, local rent control provisions are, by state law, no longer applicable. The City has been notified by representatives of one mobilehome park owner that the owner intends to seek conversion of a park to resident ownership.

**EXHIBIT B**

APR. 26. 2007 2:39PM

Y OF E PALO ALTO

NO. 5385 P. 3

Ordinance No. 299

Page 2

- f. When initiated by residents of a mobilehome park, the conversion of the park to resident ownership may provide the residents with the security and advantages of full homeownership. Such resident-initiated conversions, however, can be challenging in East Palo Alto, where the land underlying mobilehome parks is often valued in the millions of dollars, far beyond the financial reach of most park residents.
- g. The economic displacement of nonpurchasing residents resulting from the conversion of a mobilehome park initiated by the park owner is subject to Gov. Code § 66427.5. State courts have previously held that local rent controls are displaced upon the sale of a single lot within a mobilehome park. Local experiences indicate that when local rent control is removed, space rents and the sales values of mobilehomes are destabilized. Although state law provides some protection for certain mobilehome park residents, the protections may be inadequate for residents who do not qualify as a lower income household. Furthermore, the rent adjustment provisions applied pursuant to subdivision (f) of Gov. Code § 66427.5 do not appear to extend to new tenants.
- h. While Gov. Code § 66427.5 establishes certain parameters for the processing of an application for conversion of a mobilehome park to resident ownership, it appears to permit some level of local regulation which may include, but need not be limited to: specifying the procedures for accepting and processing applications; regulating the form, content and use of the survey required by Gov. Code § 66427.5; establishing standards to ensure that a conversion to resident ownership is "bona fide" in accordance with case law and Section 2 of Chapter 1142 of the California Statutes of 2002; establishing local incentives for voluntary protection of housing affordable to lower income households within mobilehome parks; or such other regulations as may essential to avoid the current and immediate loss of a significant portion of the City's vital affordable housing stock.
- i. It is in the interest of the city of East Palo Alto, of owners and residents of mobilehome parks, and of the community as a whole, that the Council consider regulations to promote the lawful purposes of preserving affordable housing within mobilehome parks, while providing opportunities for resident ownership wherever feasible and appropriate. The City Council finds that the adoption of the temporary moratorium is necessary to provide staff and advisory bodies sufficient time to study the issues and make recommendations on whether and how to regulate mobilehome park conversions consistent with the provisions of Gov. Code § 66427.5.
- j. If a temporary moratorium is not imposed, it would be destructive of any proposed future requirements and regulations if, during the period they are being studied and considered for adoption, parties seeking to avoid their operation and effect are permitted to convert existing mobilehome parks to resident ownership in a manner that might defeat in whole, or in part, the objectives of such requirements and regulations. As a result, it is necessary to establish a moratorium and prohibition on the conversion of mobilehome parks to resident ownership within the city of East Palo Alto pending the completion of the City's review of the impacts of park conversions and the enactment of local regulations consistent with the provisions of Gov. Code § 66427.5.

**EXHIBIT B**

Ordinance No. 299

Page 3

- k. Conversion of the park to a resident-owned park fundamentally alters the nature of its use because of the significant increase in land value, which would likely cause a significant change in the demographic makeup of the park residents.
- l. The March 13, 2007 Administrative Report to the City Council is hereby adopted as part of the administrative record of these proceedings.

**SECTION 2.** During the period this ordinance remains in effect, no permit or approval of any entitlement application shall be granted allowing the conversion of a mobilehome park to resident ownership within the city of East Palo Alto.

**SECTION 3.** Based on the findings and conditions set forth in Section I of this ordinance, the City Council determines and declares that the conversion of mobilehome parks to resident ownership without local regulation consistent with the provisions of Gov. Code § 66427.5 constitutes a current and immediate threat to the public health, safety, and welfare; and that this ordinance is necessary as an urgency measure for the immediate preservation of the public peace, health, or safety.

**SECTION 4.** For the purposes of this ordinance, "mobilehome park" shall mean a mobilehome park as defined in Civil Code §798.3(a). The phrase "conversion of a mobilehome park to resident ownership" shall mean a subdivision of a mobilehome park pursuant to Gov. Code § 66427.5.

**SECTION 5.** During the period this ordinance remains in effect, the provisions of this ordinance shall govern. If there is any conflict between the provisions of this ordinance and any provision of the EPAMC or any City ordinance, resolution, or policy, the provisions of this ordinance shall control.

**SECTION 6.** Environmental Determination. This ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines § 15061(b)(3) and § 15262 in that it can be seen with certainty that there is no possibility that this ordinance or its implementation would have a significant effect on the environment. The Planning Manager is directed to file a notice of exemption in accordance with CEQA and the State CEQA Guidelines.

**SECTION 7. Severability.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

B

APR. 26. 2007 2:40PM CITY OF E PALO ALTO

NO. 5385 P. 5

Ordinance No. 299

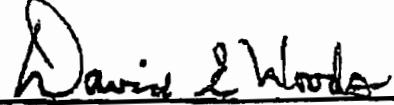
Page 4

**SECTION 8. Effective Date.** This ordinance is an ordinance for the immediate preservation of the public health, safety and welfare and is hereby declared to be in full force and effect immediately upon its passage, and shall continue in full force and effect for a period of 45 days from its date of adoption unless the terms and time period of this ordinance are extended by the City Council in accordance with Gov. Code § 68585.

\* \* \*

**PASSED AND ADOPTED** by the City Council of the City of East Palo Alto this 13th day of March, 2007 by the following vote:

AYES:	Abrica, Rutherford, Foster, Woods
NOES:	Evans
ABSTAIN:	0
ABSENT:	0



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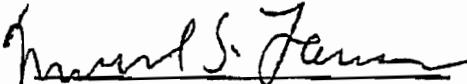
David Woods, Mayor

ATTEST:



Deputy City Clerk

APPROVED AS TO FORM:



City Attorney

 B

LAW OFFICES  
GILCHRIST & RUTTER  
PROFESSIONAL CORPORATION

WILSHIRE PALISADES BUILDING  
1289 OCEAN AVENUE, SUITE 800  
SANTA MONICA, CALIFORNIA 90401-1000

TELEPHONE (310) 393-4000  
FACSIMILE (310) 394-4700  
E-MAIL: rclose@gilchristrutter.com

April 13, 2007

VIA FEDEX

Mayor David E. Woods  
Vice Mayor Patricia Foster  
Councilmember Ruben Abrica  
Councilmember A. Peter Evans  
Councilmember Donna Rutherford  
East Palo Alto City Council  
East Palo Alto City Hall  
2415 University Avenue, 2<sup>nd</sup> Floor  
East Palo Alto, California 94303

Re: Proposed Extension of 45-Day Moratorium on Conversions of Mobilehome Parks

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Dear Mayor Woods, Vice Mayor Foster, and Councilmembers Abrica, Evans and Rutherford:

As you are aware, we represent owners of Palo Mobile Estates ("PME"), a mobilehome park located in the City of East Palo Alto ("City") which is planning to convert from a rental park to a resident-owned park pursuant to Government Code section 66427.5 of the Subdivision Map Act (the "Conversion").

We are in receipt of the City Attorney's Administrative Report dated April 17, 2007 ("Report") in which the City Attorney discusses the possibility of enacting an ordinance to extend the City's forty-five (45) day moratorium on the conversion of mobilehome parks ("Moratorium"), originally set to expire on April 27, 2007, for an additional three (3) months to July 27, 2007 ("Extension"). We had previously advised the City in a letter dated March 9, 2007 that the Moratorium was illegal. The Extension is likewise illegal for the reasons set forth below.

Indeed, not only is the Extension illegal, but illogical. California law is clear that urgency ordinances adopted pursuant to Government Code section 65858, such as the Extension, are only warranted where there is "a current and immediate threat to the public health, safety, or welfare . . ." Gov't § 65858(c) (emphasis added). As the City Attorney notes in his Report, PME intends to file a subdivision application to convert its Park pursuant to Government Code

EXHIBIT C

Mayor David E. Woods  
 Vice Mayor Patricia Foster  
 Councilmember Ruben Abrica  
 Councilmember A. Peter Evans  
 Councilmember Donna Rutherford  
 East Palo Alto City Council  
 April 13, 2007  
 Page 2

section 66427.5.<sup>1</sup> However, PME has not yet done so. In fact, **no mobilehome park in the City has yet filed a conversion application.** Even if PME, or any other mobilehome park, filed a conversion application today, it will undoubtedly not be heard or approved prior to July 27, 2007, the proposed Extension date. Clearly, there can be no exigency meriting an Extension on the Moratorium where, among other things, there is no possibility of a mobilehome park converting to resident ownership prior to the expiration of the Extension. (As explained below, a Moratorium does not prevent or stop the filing or processing of any application.)

Furthermore, the Report indicates that the City is considering a new ordinance concerning mobilehome park conversions. Section I(j) of the Extension alleges that, “it would be destructive of any proposed future requirements and regulations if, during the period they are being studied and considered for adoption, parties seeking to avoid their operation and effect are permitted to convert existing mobilehome parks to residents ownership. . . .” (emphasis added). However, this argument is without merit. As discussed above, no hearing will be held nor a conversion application approved prior to the proposed expiration of the Extension.

Moreover, in order to effect a conversion pursuant to Government Code section 66427.5, PME is obligated to meet the requirements of that section. The California Court of Appeals has stated that local governments “only ha[ve] the power to determine if [the applicant] had complied with the requirements of [Section 66427.5].” *El Dorado Palm Springs, Ltd. v. City of Palm Springs*, 96 Cal. App. 4th 1153, 1163-64 (2002) (emphasis added). Accordingly, the City will not be able to enact any legislation that will change the fundamental requirements of Government Code section 66427.5. Rather, any legislation that the City passes is limited to addressing the City’s process for determining whether applicants have complied with the requirements set forth in Section 66427.5. As such, whether PME’s application is submitted before or after the passage of such legislation is irrelevant and the Extension is therefore unnecessary.

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<sup>1</sup> Please note that the Report erroneously indicates that “no survey of residents will have taken place by the time [PME’s] application is filed” and that it “will result in a determination that the application is incomplete.” To the contrary, PME has made and will make every effort to comply with the provisions of Government Code section 66427.5. The City has no cause to assert at this time that PME’s Conversion application will fail to meet the requirements of Government Code section 66427.5. However, even if this were the case, which is it not, it merely highlights the weakness of the City’s argument that an Extension is necessary since this alleged deficient would further delay the time required to complete PME’s Conversion beyond the three month extension period proposed in the Report.

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Mayor David E. Woods  
 Vice Mayor Patricia Foster  
 Councilmember Ruben Abrica  
 Councilmember A. Peter Evans  
 Councilmember Donna Rutherford  
 East Palo Alto City Council  
 April 13, 2007  
 Page 3

In sum, extending the Moratorium where (a) no conversion applications have been filed with the City, (b) there is virtually no possibility of a mobilehome park conversion application being processed and approved prior to the expiration of the Extension, and (c) the City is likely to adopt a new ordinance concerning mobilehome park conversions prior to any mobilehome park applications being approved is both illegal and illogical. In light of these facts, the Extension serves no logical purpose.

The City Attorney's Report advised the City that, "[t]aking no action [i.e., not extending the Moratorium] is a prudent, low-risk option that will still allow the City to exercise discretion in reviewing and deciding on the conversion application." (Emphasis added.) We urge the City to heed the City Attorney's advice and take the prudent, low-risk option of allowing the Moratorium to expire. The City Attorney's Report noted that the Extension "would probably have little fiscal impact, unless the extended moratorium is challenged. In such case the City would likely incur some legal defense costs." (Emphasis added.) Please be advised that PME will challenge the Extension. In fact, this law firm has filed suit against another local government challenging a similar extension of an illegal moratorium. There, as here, damages will undoubtedly run into the millions.

I. City's Power Is Strictly Limited To Determining If Owners Have Complied With Specific Requirements Of Government Code Section 66427.5

As set forth in our March 2, 2007 and March 9, 2007 letters, under California law, local governments are preempted from legislating in the area of mobilehome park conversions. The City erroneously asserts in Section I(h) of the Extension that Government code section 66427.5 "permit[s] some level of local regulation. . . [including] regulating the form, content and use of the survey required by Gov. Code § 66427.5; establishing standards to ensure that a conversion to resident ownership is 'bona fide' . . . or such other regulations as may [sic] essential to avoid the current and immediate loss of a significant portion of the City's vital affordable housing stock."

Contrary to the City's assertion, Government Code section 66427.5 does not "permit some level of local regulation." The City clearly does not have the authority to enact or extend a Moratorium on the conversion process.<sup>2</sup> The California Court of Appeals has stated that local

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<sup>2</sup> Likewise, as more fully discussed in our letter dated March 2, 2007, the City is also mistaken in its assertion in Section I(h) of the Extension that it is allowed to "regulat[e] the form, content and use of the survey required by Gov. Code § 66427.5; [or] establish[] standards to ensure that a

Mayor David E. Woods  
 Vice Mayor Patricia Foster  
 Councilmember Ruben Abrica  
 Councilmember A. Peter Evans  
 Councilmember Donna Rutherford  
 East Palo Alto City Council  
 April 13, 2007  
 Page 4

governments “only ha[ve] the power to determine if [the applicant] had complied with the requirements of [Section 66427.5].” *El Dorado Palm Springs, Ltd. v. City of Palm Springs*, 96 Cal. App. 4th 1153, 1163-64 (2002) (emphasis added).

Indeed, the *El Dorado* court conclusively determined that: (i) Government Code section 66427.5 controls a mobile home conversion from a rental park to a resident-owned park (*Id.* at 1158-63); (ii) the purpose of Government Code section 66437.5 is to provide uniform statewide standards for converting rental parks into resident-owned parks, thereby promoting conversions to home ownership (*Id.* at 1169-1170); (iii) the requirements set out in Government Code section 66427.5 are exclusive and local government has no authority to impose additional conditions (*Id.* at 1164, 1166); (iv) if the requirements of Government Code section 66427.5 are met, the local agency must approve the conversion application (*Id.* at 1165, 1167); (v) local government does not have the ability or the authority to determine whether a conversion is “bona-fide” or not (*Id.* at 1165); and (vi) mobilehome park residents do not have and cannot have the ability to veto a conversion by withholding support for a conversion application (*Id.* at 1172, 1181-82).

Clearly, under *El Dorado*, the City’s authority is strictly limited to confirming that PME’s conversion application, if and when it is submitted, complies with the requirements contained in Government Code section 66427.5. As such, the City does not have the authority to delay or halt PME’s Conversion by imposing or extending a Moratorium. As discussed more fully below, the City’s attempts to do so could cause it to be liable to PME for millions of dollars worth of damages.

II. The Conversion Of A Mobilehome Park From A Leasehold To Resident Ownership Does Not Constitute A Change Of Use Allowing For The Imposition Of An Interim Ordinance Under Government Code Section 65858.

Government Code section 65858(a) states that the local legislative body may “adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal . . .” (emphasis added). However, as with the Moratorium, the Extension does not purport (nor could it) to prohibit a mobilehome parks’ use as a mobilehome park. Rather, it attempts to temporarily prohibit the conversion of mobilehome parks to resident ownership. As the court made clear in *El Dorado* however, “[A]

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conversion to resident ownership is bona fide.” As we advised the City in our March 2, 2007 letter, this is contrary to California law for the reasons set forth therein.

**EXHIBIT C**

Mayor David E. Woods  
 Vice Mayor Patricia Foster  
 Councilmember Ruben Abrica  
 Councilmember A. Peter Evans  
 Councilmember Donna Rutherford  
 East Palo Alto City Council  
 April 13, 2007  
 Page 5

change in form of ownership is not a change in use. After the change of ownership, the mobilehome park will remain a mobilehome park." 96 Cal. App. 4th at 1162.

Furthermore, it is well established that a local agency cannot enact a moratorium on the filing or processing of subdivision applications. *See Building Indus. Legal Def. Fund. v. Superior Court*, 72 Cal. App. 4th 1410. In *Building Industry*, the court held, "[n]othing in [Section 65858] permits a city to prohibit the formal processing of development applications, such as a tentative subdivision map." *Id.* at 1420. The court also found that "[t]he Subdivision Map Act has established a comprehensive procedure for processing development applications, and nothing in it allows a city to prohibit the processing of a tentative subdivision map that is complete, a city cannot use an interim ordinance as a backdoor method to modify the rules." *Id.* at 1417 (emphasis added).

In sum, Section 65858(a) was not intended, and cannot be used, to circumvent the City's limitations in legislating mobilehome park conversions.

### III. There Is No Urgency Or Threat Justifying The Enactment Of A Moratorium.

It is also well-established that unless the ordinance "recites facts that constitute the urgency and those facts may reasonably be held to constitute an urgency," an interim urgency ordinance will be held invalid. *216 Sutter Bay Assoc. v. County of Sutter*, 58 Cal. App. 4<sup>th</sup> 860, 868 (1997). The Board of Supervisors may not use its power to pass interim urgency measures to further public policy goals where there is no finding of "a current and immediate threat." Gov't Code § 65858(c).

Here, as discussed above, there can be no facts which can support a finding of an "urgency" or an "immediate threat" to public health, safety and welfare because mobilehome park conversions pose no threat at all to the public health, safety and welfare. They certainly do not pose an "urgent" threat, especially here, where (a) no conversion applications have been filed with the City, (b) there is virtually no possibility of a mobilehome park conversion application being processed and approved prior to the proposed July 27, 2007 expiration of the Extension, and (c) the City is likely to adopt a new ordinance concerning mobilehome park conversions prior to any mobilehome park applications being approved.

There is an elaborate state legislative scheme that is designed to both encourage conversions and protect affordable housing. The Subdivision Map Act, and in particular Government Code section 66427.5, provides a comprehensive structure for mobilehome park

EXHIBIT C

Mayor David E. Woods  
 Vice Mayor Patricia Foster  
 Councilmember Ruben Abrica  
 Councilmember A. Peter Evans  
 Councilmember Donna Rutherford  
 East Palo Alto City Council  
 April 13, 2007  
 Page 6

conversions while also providing mitigation measures. It is settled law that section 66427.5 establishes a uniform statewide approach for converting mobile home parks to resident-owned facilities. *See El Dorado*, 96 Cal. App. 4th at 1168-69. Specifically, Government Code section 66427.5(f) provides statutory rent control protection. Furthermore, there is a state program under the Department of Housing and Community Development in existence for the sole purpose of providing financial assistance to low-income residents who choose to purchase their lot, thus encouraging local agencies and residents to support conversions to resident ownership. Moreover, mobile home park residents *may continue to rent their units even after conversion to resident-ownership*, thus calling into question whether any threat exists at all, let alone the immediacy of any alleged threat.

#### IV. PME Will Seek Damages Against The City For A Delay In The Approval Of Its Conversion Application.

Although no application has yet been submitted, PME has clearly indicated that it will apply for a Conversion. PME's ability to prepare its application and begin the conversion process provided for pursuant to Government Code section 66427.5 has been compromised by the Moratorium and will be further compromised by any Extension thereto.

California law is clear that local governments are pre-empted from attempting to legislate in the area of mobile home park conversions. The same rational that prohibits the City from imposing a Moratorium prevents it from approving the Extension. If PME is forced to seek court intervention to invalidate the illegal Extension, or to invalidate any other actions the City takes to hinder or halt its Conversion, such delay caused by having to seek legal redress will result in damages to PME.

Any delay caused by the City to the Conversion will cause the City to be liable for inverse condemnation, or "takings," damages. The proper measure of damages for a taking would award the landowner "the return on the portion of fair market value that is lost as a result of regulatory restriction," or "the market rate return computed over the period of the temporary taking on the difference between the property's fair market value without the regulatory restriction and its fair market value with the restriction." *Wheeler v. County of Pleasant Grove*, 833 F.2d 267, 270-71 (11<sup>th</sup> Cir. 1987). Courts are in agreement that appreciation of the property during a taking must not be factored into the inverse condemnation damages calculation. *See Wheeler v. County of Pleasant Grove*, 833 F.2d 267, 271 (11th Cir. 1987); *Herrington v. County of Sonoma*, 790 F. Supp. 909, 914 (N.D. Cal. 1991), *aff'd*, 12 F.3d 901 (9th Cir. 1993). The United States Supreme Court has expressly held that because the market value of a property

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East Palo Alto City Council  
April 13, 2007  
Page 7

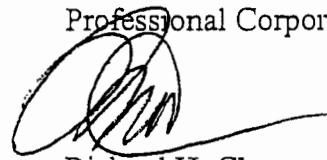
frequently appreciates during the period of a temporary taking, compensation is not measured by comparing the value of the property before and after its taking, because to do so would often result in no compensation being awarded the property owner despite having lost the use or value of its property during the taking. *Wheeler*, 833 F.2d at 271, citing *Kimball Laundry Co. v. United States*, 338 U.S. 1,7 (1949)).

Again, we stress that upon Conversion, the Park will not be closed and no one will be evicted. Upon Conversion, residents have the choice whether to buy the lot their home currently sits on or to continue renting. In fact, low income residents will be forever protected by state rent control which caps rent increases at CPI, or less. In San Mateo County, a two person household earning \$72,400 qualifies as low income (for a four person household, an annual income level of \$90,500 qualifies.)

PME hopes that the City Council will refrain from approving the Extension, which extends an already illegal delay on mobilehome park conversions. However, if the City does enact the Extension, thereby further delaying the Conversion, we will be forced to bring claims against the City for inverse condemnation and other wrongful acts. Damages will undoubtedly run into the millions.

Very truly yours,

GILCHRIST & RUTTER  
Professional Corporation



Richard H. Close  
Of the Firm

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4604.001

cc: Michael S. Lawson, Esq., City Counsel (Via FedEx)

**ORDINANCE NO. 300**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
EAST PALO ALTO EXTENDING A TEMPORARY MORATORIUM ON THE  
CONVERSION OF MOBILEHOME PARKS TO RESIDENT OWNERSHIP FOR  
AN ADDITIONAL THREE MONTHS, TO JULY 27, 2007**

The City Council of the City of East Palo Alto does ordain as follows:

**SECTION 1.** This ordinance is adopted pursuant to Gov. Code §§ 36937(d) and 65858. The purpose of this ordinance is to extend the prohibition on the conversion of mobilehome parks to resident ownership within the city of East Palo Alto, pending enactment of permanent regulations affecting such conversions. The East Palo Alto City Council finds and determines as follows:

- a. Mobilehome parks provide a significant segment of the affordable housing stock available for East Palo Alto residents. At present there are two mobilehome parks subject to rent regulation within East Palo Alto. These two parks containing some 150 mobilehome spaces are subject to the rent adjustment provisions of Chapter 14.04 of the East Palo Alto Municipal Code (EPAMC), incorporated by reference herein.
- b. In most instances, mobilehome residents own or are purchasing their mobilehomes and pay monthly rent for the spaces beneath. Annual rent increases for mobilehome spaces are regulated under Chapter 14.04 of the EPAMC.
- c. The reasons for the City's Rent Adjustment Ordinance are set forth at § 14.04.020 of the EPAMC.
- d. The Housing Element of the City's General Plan, incorporated by reference herein, seeks to preserve affordable housing by conserving the City's existing stock of mobilehomes through enforcement of City ordinances that protect mobilehome parks from conversion and by providing rent stabilization protection. The Housing Element acknowledges, and the testimony and evidence adduced at the March 13, 2007 and April 24, 2007 public hearings confirm, that residents of mobilehome parks are seniors, or low-to-moderate income residents unable to purchase homes in the Bay Area housing market. Many residents are on fixed-incomes or are disabled while other residents would have great difficulty in relocating their older mobilehomes to other parks in San Mateo County with comparable amenities.
- e. State law permits a mobilehome park to be subdivided into separate lots, such that residents may own not only the mobilehome itself, but also the space beneath it. These subdivisions are known as "the conversions of a mobilehome park to resident ownership." Upon such conversion to resident ownership, local rent control provisions are, by state law, no longer applicable. The City has been notified by representatives of one mobilehome park owner that the owner intends to seek conversion of a park to resident ownership.

D

Ordinance No. 300  
Page 2

- f. When initiated by residents of a mobilehome park, the conversion of the park to resident ownership may provide the residents with the security and advantages of full homeownership. Such resident-initiated conversions, however, can be challenging in East Palo Alto, where the land underlying mobilehome parks is often valued in the millions of dollars, far beyond the financial reach of most park residents.
- g. The economic displacement of nonpurchasing residents resulting from the conversion of a mobilehome park initiated by the park owner is subject to Gov. Code § 66427.5. State courts have previously held that local rent controls are displaced upon the sale of a single lot within a mobilehome park. Local experiences indicate that when local rent control is removed, space rents and the sales values of mobilehomes are destabilized. Although state law provides some protection for certain mobilehome park residents, the protections may be inadequate for residents who do not qualify as a lower income household. Furthermore, the rent adjustment provisions applied pursuant to subdivision (f) of Gov. Code § 66427.5 do not appear to extend to new tenants.
- h. While Gov. Code § 66427.5 establishes certain parameters for the processing of an application for conversion of a mobilehome park to resident ownership, it appears to permit some level of local regulation which may include, but need not be limited to: specifying the procedures for accepting and processing applications; regulating the form, content and use of the survey required by Gov. Code § 66427.5; establishing standards to ensure that a conversion to resident ownership is "bona fide" in accordance with case law and Section 2 of Chapter 1142 of the California Statutes of 2002; establishing local incentives for voluntary protection of housing affordable to lower income households within mobilehome parks; or such other regulations as may essential to avoid the current and immediate loss of a significant portion of the City's vital affordable housing stock.
- i. It is in the interest of the city of East Palo Alto, of owners and residents of mobilehome parks, and of the community as a whole, that the Council consider regulations to promote the lawful purposes of preserving affordable housing within mobilehome parks, while providing opportunities for resident ownership wherever feasible and appropriate. The City Council finds that the extension of the temporary moratorium is necessary to provide staff and advisory bodies sufficient time to study the issues and make recommendations on whether and how to regulate mobilehome park conversions consistent with the provisions of Gov. Code § 66427.5.
- j. If the temporary 45-day adopted March 13, 2007 and scheduled to expire April 27, 2007 is not extended, it would be destructive of any proposed future requirements and regulations if, during the period they are being studied and considered for adoption, parties seeking to avoid their operation and effect are permitted to convert existing mobilehome parks to resident ownership in a manner that might defeat in whole, or in part, the objectives of such requirements and regulations. As a result, it is necessary to extend the moratorium and prohibition on the conversion of mobilehome parks to resident ownership within the city of East Palo Alto pending the completion of the City's review of the impacts of park conversions and the enactment of local regulations consistent with the provisions of Gov. Code § 66427.5.

Ordinance No. 300  
Page 3

- k. Conversion of the park to a resident-owned park fundamentally alters the nature of its use because of the significant increase in land value, which would likely cause a significant change in the demographic makeup of the park residents.
- l. During the initial moratorium, a report was made to the Rent Stabilization Board regarding the justification for the moratorium; this report was made because conversion to a resident-owned park would result in loss of protections afforded by the City's rent stabilization program;
- m. During the initial moratorium, a report was made to the Planning Commission regarding the likely filing of a subdivision application to convert Palo Mobile Estates mobile home park to a resident-owned park; this report was made because the Planning Commission is the initial decision-making body regarding subdivision applications. The Planning Commission was also given information regarding similar proceedings in other communities and the possibility of new legislation that might guide the processing of such applications;
- n. During the initial moratorium, a meeting of stakeholders, including Palo Mobile Estates residents and the park owner's representatives, was facilitated by Mayor Woods and Vice Mayor Foster; the purpose of this meeting was to identify common concerns and possible compromises.
- o. During the initial moratorium, City staff monitored bills introduced in the state Assembly and Senate to amend Gov. Code § 66427.5, the statute which currently guides the conversion process; and
- p. City staff also monitored, and consulted with, other communities with similar moratoriums in place or recently-expired, such as the counties of Santa Cruz and Sonoma, and the city of Santa Rosa. Staff continues to monitor the 30 or so communities in California with conversion applications on file or imminent.
- q. The April 17, 2007 Administrative Report to the City Council is hereby adopted as part of the administrative record of these proceedings.

**SECTION 2.** During the period this ordinance remains in effect, no permit or approval of any entitlement application shall be granted allowing the conversion of a mobilehome park to resident ownership within the city of East Palo Alto.

**SECTION 3.** Based on the findings and conditions set forth in Section 1 of this ordinance, the City Council determines and declares that the conversion of mobilehome parks to resident ownership without local regulation consistent with the provisions of Gov. Code § 66427.5 constitutes a current and immediate threat to the public health, safety, and welfare; and that this ordinance is necessary as an urgency measure for the immediate preservation of the public peace, health, or safety.

D

Ordinance No. 300

Page 4

**SECTION 4.** For the purposes of this ordinance, "mobilehome park" shall mean a mobilehome park as defined in Civil Code § 798.3(a). The phrase "conversion of a mobilehome park to resident ownership" shall mean a subdivision of a mobilehome park pursuant to Gov. Code § 66427.5.

**SECTION 5.** During the period this ordinance remains in effect, the provisions of this ordinance shall govern. If there is any conflict between the provisions of this ordinance and any provision of the EPAMC or any City ordinance, resolution, or policy, the provisions of this ordinance shall control.

**SECTION 6. Environmental Determination.** This ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines § 15061(b)(3) and § 15262 in that it can be seen with certainty that there is no possibility that this ordinance or its implementation would have a significant effect on the environment. The Planning Manager is directed to file a notice of exemption in accordance with CEQA and the State CEQA Guidelines.

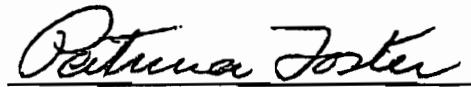
**SECTION 7. Severability.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION 8. Effective Date.** This ordinance is an ordinance for the immediate preservation of the public health, safety and welfare and is hereby declared to be in full force and effect from April 27, 2007 to and including July 27, 2007 unless the terms and time period of this ordinance are terminated or extended by the City Council in accordance with Gov. Code § 68585.

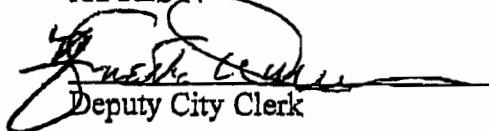
\* \* \*

**PASSED AND ADOPTED** by the City Council of the City of East Palo Alto this 24th day of April, 2007 by the following vote:

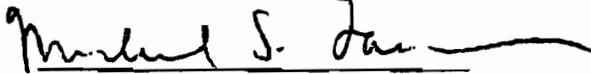
AYES: Woods, Foster, Rutherford, Abrica  
NOES: Evans  
ABSTAIN: 0  
ABSENT: 0

  
\_\_\_\_\_  
David Woods, Mayor

ATTEST:

  
\_\_\_\_\_  
Deputy City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael S. Doe  
City Attorney

  
\_\_\_\_\_  
Michael S. Doe

**EXHIBIT B**

(CITACION JUDICIAL)

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

CITY OF EAST PALO ALTO, a municipal corporation; DOES 1 through 10, inclusive

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)**ENDORSED FILED  
SAN MATEO COUNTY**

JUN 12 2007

Clerk of the Superior Court  
By A. De Leon  
DEPUTY CLERK**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PALO MOBILE ESTATES ASSOCIATES, a California limited partnership

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Mateo Superior Court  
400 County Center  
Redwood City, California 94063CASE NUMBER  
(Número del Caso): **CV 463686**

Southern Branch

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Thomas W. Casparian 310.393.4000 310.394.470 - fax

Gilchrist &amp; Rutter

1299 Ocean Avenue, Suite 900  
Santa Monica, California 90401**A. De LEON**

DATE:

(Fecha) **JUN 12 2007****JOHN C. FITTON**Clerk, by \_\_\_\_\_  
(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1.  as an individual defendant.2.  as the person sued under the fictitious name of (specify):3.  on behalf of (specify): City of East Palo Altounder:  CCP 416.10 (corporation) CCP 416.60 (minor) CCP 416.20 (defunct corporation) CCP 416.70 (conservatee) CCP 416.40 (association or partnership) CCP 416.90 (authorized person) other (specify): CCP 416.50 (public entity)4.  by personal delivery on (date):RECEIVED  
CITY OF EAST PALO ALTO COUNCIL OFFICE  
**JUN 13 A 11:55**